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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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01/07/2002

Ulrich Braun

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5907

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07/21/2006

Lisa A Haile
Gray Cary Ware & Freidenrich
Suite 1600
4365 Executive Drive
San Diego, CA 92121

EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890,113

Applicant(s)

BRAUN, ULRICH

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 03, 2005 & June 05, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7-15,17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 7-10,17,19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 11-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 03, 2005 has been entered.

2. The proposed drawing correction filed on November 03, 2005 is disapproved as containing new matter. Paragraphs 0002 and 0007 do not specify the particular structure added as Figs. 4A-4E, contrary to the argument at pages 10-11 of the response filed November 03, 2005.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "partition wall" set forth in claims 1 and 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended.

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The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The amendment filed November 03, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Paragraph 0002 which references Figs. 4A-4E. Furthermore, this amended paragraph does not comply with Rule 121 in that at least reference numerals 202, 203 and 205 are not

found in the prior version thereof, but also are not indicated as being added thereto.

Applicant is required to cancel the new matter in the reply to this Office Action.

5. Claims 1, 2, 5 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites "no partition wall". Claim 13 recites similar subject matter. To the extent applicant would rely upon new Figs. 4A-4E in support of this subject matter, such is therefore considered to be new matter.

Applicant argues at page 13 of the response paragraphs 0001-0004 support this subject matter. The examiner can not agree as applicant has not reconciled the discussion in the noted paragraphs of "hydraulically unconnected" bowls with the disclosed invention which includes "hydraulically connected" outlets 202,203. Applicant argues at page 14 of the response "the specification provides functional characteristics that would enable one of skill in the art to understand what constitutes a partition wall in the context of a toilet." The

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examiner can not agree as the claims recites a "device". It is well settled that patentability of a product/apparatus claim is predicated upon structure rather than any functional or intended use feature.

6. Claims 1, 5, 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 13 are unclear as to the metes and bounds of the term "partition wall". The claims recite the absence of such a wall, but there appears to be a "partition wall" illustrated in Fig. 2A separating elements 202 and 203.

Claim 11 is unclear as to whether the "toilet" is intended to be part of the claimed combination since structure of the "device" is defined as being connected thereto (lns. 4-5, 9-10), but no positive structural antecedent basis therefor has been defined. Applicant's amendment to the claim further complicates the issue raised. Claim 5 is similarly indefinite.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 5 and 11-15, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Geeham '850.

The Geeham '850 (Geeham) reference discloses a device comprising: a device for opening 18; a device for closing 52b; "no partition wall" (in the same sense as with applicant's disclosed device) as outlets 28,45 communicate with a common drain 36; and a feature 65, as claimed. Re claim 1, the Geeham opening and closing devices are capable of being used in the functionally recited manner. Re claim 5, the Geeham device further comprises a toilet bowl 12 including protrusions (Fig. 1, 26 and at 34). Re claim 11, the Geeham toilet bowl further includes a urine outlet 45 "in front of" a faecal outlet 28.

Applicant argues at page 16 of the response the Geeham toilet bowl does not have protrusions. The examiner can not agree as bowl 12 in Geeham includes several protrusions for guiding urine. One such protrusion is illustrated in Fig. 1 between the arrow for reference numeral 24 and reference numeral 34. Applicant argues at pages 16-17 of the response the Geeham toilet is not capable of being used in the functional manner recited in claims 1 and 11. The examiner can not agree. Initially, it is noted applicant's claims appear to recite a

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"device" rather than a toilet or methods as argued. In any event, the opening device 18 in Geeham would function whether a user either sits on the toilet seat (12) or not. Furthermore, the closing device 52b in Geeham would function whether a user either rises or does not. Moreover, the opening and closing devices would function whether there was water in the toilet bowl 12 or not. Lastly, it is noted solids may not remain anywhere in the Geeham toilet bowl (since solids are not always placed therein) which would render the draining with flushing water features of claims 1 and 11 inconsequential.

9. Claims 1, 2, 5 and 11-15, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Wilhelm.

The Wilhelm reference discloses a device comprising: a device for opening 43; a device for closing 41; "no partition wall" (in the same sense as with applicant's disclosed device) as outlets 17,22 communicate with a common drain 19; and a feature (col. 2 lns. 62-65), as claimed. Re claim 1, the Wilhelm opening and closing devices are capable of being used in the functionally recited manner. Re claim 5, the Wilhelm device further comprises a toilet bowl 16 including protrusions (Fig. 1, at 16 and at 22). Re claim 11, the Wilhelm toilet bowl further includes a urine outlet 22 "in front of" a faecal outlet 17.

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Applicant's arguments at pages 17-19 of the response regarding the functional language of the claims are deemed unpersuasive for reasons analogous to those set forth supra regarding Geeham.

10. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

11. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", is positioned above the printed name and title.

Robert M. Fetsuga
Primary Examiner
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